Summary of Wyden-Portman discussion draft to disallow Foreign Tax Credits for companies that pay taxes to the Russian government, and disallow other tax benefits

Loss of foreign tax credits

Denial of foreign tax credits for income taxes paid to Russia or Belarus. 30 days after the legislation becomes law, tax code section 901(j) will apply to Russia and Belarus. Once section 901(j) applies, any income taxes paid or accrued to Russia or Belarus, and attributable to the period after section 901(j) applies, are ineligible as a foreign tax credit. By adding Russia and Belarus to section 901(j), they join an existing list of countries already ineligible for foreign tax credits: North Korea, Iran, Syria, and Sudan. In addition to losing eligibility for foreign tax credits, income taxes paid to Russia or Belarus would be ineligible for deductions.

Income subject to full corporate tax rate in subpart F. Under existing tax code section 952(a)(5), income derived by a controlled foreign corporation from countries subject to the section 901(j) is automatically treated as "subpart F income." This means that any income earned in that country is subject to the full 21-percent corporate rate, and any losses from that country cannot be used to offset other income earned as global intangible low-taxed income (GILTI).

Exit safe harbor. Companies that have already exited or are rapidly shutting down operations in Russia and Belarus may be eligible to have section 952(a)(5) turned off, such that losses from those countries could be treated as GILTI losses, rather than being in subpart F (foreign taxes remain ineligible as a credit or deduction). This safe harbor is intended to allow companies that have substantially shut down operations in Russia or Belarus to utilize losses that have occurred, or continue to occur. To qualify for the safe harbor, gross revenues in Russia or Belarus need to drop, compared to 2021, by at least 85 percent in 2022 and 95 percent in 2023 and later. The test period for the year begins once a country is subject to section 901(j). Treasury is authorized to develop an alternative calculation for access to the exit safe harbor, and to exclude revenue from sales under an Office of Foreign Asset Control general license for humanitarian grounds from the calculation as revenue from Russia or Belarus.

End of application of section 901(j). The application of section 901(j) to Russia or Belarus will end at the same time that the restrictions from normal trade relations status are lifted under the Suspending Normal Trade Relations with Russia and Belarus Act.

Loss of U.S. tax benefits

Loss of tax benefits. Identified persons will lose access to a number of tax benefits provided in tax treaties and the tax code. The list of tax benefits lost includes:

- Any tax treaty benefits,
- The exemption from withholding for foreign governments (section 892),
- The exemption from withholding for portfolio interest (sections 871(h) and 881(c)),
- The "trading safe harbor" (section 864(b)),
- Exemption from tax for shipping income (section 883), and

- Exemptions from Foreign Investment in Real Property Tax Act withholding (section 897(l)).

Persons losing benefits. The loss of tax benefits listed above applies to three categories of identified persons:

1. Any person already sanctioned by the U.S. in relation to the invasion of Ukraine,
2. The governments of Russia and Belarus, and
3. Any other person identified by the Secretary as meriting the loss of these tax benefits, and that also is:
    a. Participating in the invasion of Ukraine,
    b. An entity organized in Russia or Belarus (excluding controlled foreign corporations), or
    c. An executive or officer of such entity.

In addition, the Secretary can identify any person that controls, is controlled by, is related to, or is an affiliate of, any person that is identified under one of the three categories. If an entity is controlled by a Russian or Belarusian entity that has been identified by the Secretary, it is automatically subject to the loss of tax benefits, even if it is not explicitly identified by the Secretary. The entity must notify the Treasury and also all of their U.S. withholding agents that it is subject to the loss of tax benefits.

Portfolio interest rule. The loss of tax benefits generally applies 30 days after the later-of enactment of this legislation or a person is included in one of the three categories of persons. For portfolio interest, the application is changed to 60 days for new obligations, or 180 days from the date of enactment for pre-existing obligations.

Suspension of information exchange

Tax information exchange for Russia and Belarus under a tax treaty or an intergovernmental agreement is suspended as long as section 901(j) applies.